

## Zayo Enterprise Networks Master Services Agreement

This Agreement (the "Agreement") is made and entered into this 15th day of June, 2009, ("Effective Date") by and between Zayo Enterprise Networks, LLC, (hereinafter referred to as "Zayo"), and Shelby County Government, a local governmental entity located in and subject to the laws and jurisdiction of the State of Tennessee, County of Shelby, (hereinafter referred to as "Customer"). Customer and Zayo individually referred to as "Party" and collectively referred to herein as "Parties." Exhibits A and B attached hereto and incorporated by reference detail the price, location, and other information about the service(s) to be provided by Zayo.

### 1. General Terms and Conditions Term.

1.1 The Term of this Master Agreement shall commence on July 1, 2009 and continue through June 30, 2014. Upon the expiration of the Term of Service, In the event the Parties to this Agreement choose to continue service through an extension agreed to in writing by all parties to this Agreement, all of the terms and conditions of this Agreement shall apply during said extension period.

1.2 Customer shall take and pay for each Service for the applicable Service Term set forth in Exhibit B. The Service Term for each Service shall begin on the date (the "Start of Service Date") on which Customer accepts delivery and testing of such Service or five (5) days after Zayo notifies Customer that the service has met all applicable standard Zayo network specifications ("Specifications") as described in Exhibit A and is available for Customer's use, whichever is sooner, unless (1) Customer notifies Zayo within said 5 day period that the Service is in material non-compliance with the Specifications. In the event of notice of material non-compliance as defined above, Zayo shall promptly take such reasonable action as necessary to correct any such non-compliance in the Service and shall, upon correction, notify Customer of a new Start of Service Date. If Zayo does not correct any such non-compliance within a reasonable period of time, then Customer may terminate this Agreement. Zayo's obligation to provide the Services is conditioned upon Customer not allowing the Services to be used for any unlawful purpose; or in violation of any governmental law or regulation. Customer represents that it has obtained all necessary permits, licenses and approvals necessary to carry out the business in which Customer is engaged.

### 2. Charges and Payment.

2.1 Zayo shall provide the Services at the rates and upon terms specified herein.

2.2 Payment for all charges and governmental taxes and assessments on the Service is due within thirty (30) days of date of invoice. Zayo acknowledges Customer is a governmental entity and is therefore tax exempt. Zayo shall also have the right, after giving Customer ten (10) days written notice, to cancel or suspend all Services until Customer has paid bill in full. Written requests for billing adjustments together with all supporting documentation must be received by Zayo within thirty (30) days from the date of the invoice or the right to billing adjustment shall be waived. In the event of a billing dispute, Customer shall timely pay the undisputed amounts.

2.3 Any applicable sales, use, commercial or other similar taxes or license fees imposed with respect to Services provided by Zayo, as well as any other imposition by any governmental authority which has the effect of increasing Zayo cost of providing such Services, shall also be payable by Customer in addition to the other charges set forth in this Agreement. Zayo acknowledges Customer is a governmental entity and is therefore tax exempt. Further Zayo agrees to not bill any taxes to Shelby County Government which it would not be subject to pay.

2.4 Customer acknowledges that prior to initiation of service, Zayo will conduct a review of Customer's credit rating, and that Zayo may require a security deposit. The amount of the deposit will be based upon the anticipated monthly billing for the Services the Customer is ordering. In the event a deposit is required, Customer will be notified and will be required to execute a separate security deposit agreement. Furthermore,

Zayo reserves the right during the Term of this Master Agreement to review Customer's monthly bills and payment history and if deemed necessary, may require an initial deposit and/or increase an existing deposit.

### 3. Termination

3.1 This Agreement is subject to annual appropriations of funds by the Shelby County Government. In the event sufficient funds are not appropriated by Shelby County Government for any fiscal period during the Term hereof, then this Contract shall be terminated without penalty or further liability.

3.2 During the Term, Customer may terminate this Agreement without penalty or further liability in the event that Zayo fails to: 1) deliver the Service Level Commitments described herein as determined by commercially reasonable standards for a continuous seventy-two (72) hour period; and/or 2) correct any non-compliance as described in Section 1.2 above.

**4. Compliance with Laws and Acceptable Use.** Zayo offers Customer access to the Internet. Customer hereby acknowledge that the Internet is not owned, operated, managed by or in any way affiliated with Zayo or any of its affiliates, and that it is a separate network of computers independent of Zayo. Customer's use of the Internet is solely at Customer's own risk and is subject to all applicable local, state, national and international laws and regulations. Access to the Internet is dependent on numerous factors, technologies and systems, many of which are beyond Zayo's authority and control.

**5. Customer Responsibilities.** Customer shall (1) be required to provide adequate electrical power, a suitable cable access route, environment, and space for Zayo's equipment and to pay for any damages caused to Zayo's equipment by Customer's negligence burden of proof of negligence shall be with Zayo; (2) shall make Zayo's equipment located on Customer's premises available for maintenance in a timely manner; (3) shall pay Zayo's charges for time and material resulting from problems which were caused by Customer or Customer's equipment; (4) upon reasonable advance notice, Customer shall provide Zayo with access to Zayo's equipment for the purpose of removing same. Any Zayo equipment shall remain the property of Zayo and shall not become part of the real estate; and (5) provide Zayo with detailed information related to customer's main address and/or other service locations, contact information and all end-user addresses/locations corresponding to all telephones/stations. Customer agrees to continually update this information and shall provide Zayo written notification prior to implementing any moves, adds or changes to telephones/stations. Customer acknowledges and agrees that failure to provide such information on a timely basis will severely impair Zayo's ability to provide emergency 911 services. Customer acknowledges that its services (including emergency 911 services) may be impacted by the capacity associated with customer owned equipment, customer's internal network design and/or customer's usage thereof.

**6. Governmental Authority.** The obligation of Zayo to provide the Services to Customer is subject to the receipt of any required regulatory or other governmental authorizations. This Agreement may be superseded by a tariff filed with the appropriate regulatory agency, which tariff may contain such modifications of the provisions of this Agreement as Zayo deems appropriate. In the event that such a tariff



materially affects Customer's rights or obligations hereunder, Customer may terminate the specific Services so affected. Zayo reserves the right to terminate this Agreement at any time Zayo does not have or loses the required regulatory or other governmental authorization to provide the services.

**7. Assignment.** Either Party may assign this Agreement with the prior written approval of the other Party, which approval shall not be unreasonably withheld. Any attempted transfer or assignment in violation of this Agreement shall entitle the non-assigning Party to terminate this Agreement upon notice to the other Party.

#### **8. Event of Default.**

8.1 An "Event of Default" shall occur if: (1) Customer fails to make any payment required to be made by it under this Agreement and any such failure remains uncorrected for five business days after written notice such payment was due; (2) either party fails to perform or observe any material term or obligation (other than Customer's payment obligations) contained in this Agreement, and any such failure remains uncorrected for 30 calendar days after receipt of a notice from the non defaulting party informing the defaulting party of such failure; (3) a voluntary or involuntary proceeding shall be commenced by or against Customer in any jurisdiction seeking liquidation, reorganization or other relief under any bankruptcy or similar law which is not dismissed within 30 calendar days of filing; or Customer makes an assignment for the benefit of creditors; or shall generally not agree to pay or not be able to pay its debts as they become due; (4) Customer breaches its obligations to Zayo in any other agreement between Zayo and Customer.

#### **9. Remedies.**

9.1 If Customer is in default Zayo may, in addition to any other rights Zayo has under this Agreement or under the law; (1) suspend its performance under this Agreement without the requirement of any further notice to Customer, until Customer has remedied all events of default and paid in full all charges when due and any further deposits required by Zayo; or (2) terminate this Agreement effective upon notice to Customer.

9.2 If Zayo is in default, Customer may, in addition to any other remedies it has under this Agreement or under the law, terminate this Agreement without penalty or further liability.

**10. Force Majeure.** Notwithstanding anything herein to the contrary, Zayo shall not be liable to Customer or any other party for any failure of performance if such failure is due to any cause or causes beyond the reasonable control of Zayo including, but not limited to, fire, explosion, vandalism, cable cut, storm or other similar occurrences, any governmental action or any national emergencies, insurrections, riots, wars, strikes or other labor difficulties, supplier failures, or shortages.

#### **11. Limitation of Liability.**

11.1 IN NO EVENT SHALL THE CUMULATIVE LIABILITY OF ZAYO UNDER THIS AGREEMENT EXCEED THE TOTAL PAYMENTS PAID BY CUSTOMER TO ZAYO FOR THE TWELVE (12) MONTHS PRECEDING THE EVENT OF DEFAULT.

11.2 IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR INDIRECT, SPECIAL, PUNITIVE, CONSEQUENTIAL, OR INCIDENTAL DAMAGES, INCLUDING BUT NOT LIMITED TO, THE LOSS OF PROFITS, REVENUES OR DATA OR INACCURATE DATA, EVEN IF ADVISED OF THE FORESEEABILITY OF SUCH DAMAGES.

11.3 ZAYO DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTIES WITH RESPECT TO SERVICE OR EQUIPMENT, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND/OR FITNESS FOR A PARTICULAR PURPOSE.

#### **12. Indemnification.**

12.1 Zayo shall indemnify, defend, save and hold harmless the Customer, and its elected officials, officers, employees, agents, assigns, and instrumentalities from and against any and all claims, liability, losses or damages—including but not limited to Title VII and 42 USC 1983 prohibited acts occurring from gross negligence or willful defaults that occur in connection with or in breach of this Contract or in the performance of the Services hereunder, whether performed by Zayo its subcontractors, agents, employees or assigns and provided however that in no event either party is liable for the following categories of damages: punitive, consequential, indirect, special, loss of use, loss of data, lost profits, lost income, or loss of goodwill. To the extent permitted by Tennessee State Law each party agrees to be responsible for its own acts, errors, or omissions pertaining to this indemnification provision. This indemnification shall survive the termination or conclusion of this Contract.

12.2 Zayo expressly understands and agrees that any insurance protection required by this Contract or otherwise provided by the Customer shall in no way limit the responsibility to indemnify, defend, save and hold harmless the Customer or its elected officials, officers, employees, agents, assigns, and instrumentalities as herein provided.

12.3 The Customer has no obligation to provide legal counsel or defense to Zayo or its subcontractors in the event that a suit, claim or action of any character is brought by any person not a party to this agreement against Zayo as a result of or relating to performance of the Services under this Contract.

12.4 Except as expressly provided herein, the Customer has no obligation for the payment of any judgment or the settlement of any claims against Zayo as a result of or relating to performance of the Services under this Contract.

12.5 Zayo shall immediately notify the Customer of any claim or suit made or filed against Zayo or its subcontractors regarding any matter resulting from or relating to Zayo's performance of the Services under this Contract and will cooperate, assist and consult with the Customer in the defense or investigation thereof.

**13. Equipment and Installation.** Neither party shall adjust, align, attempt to repair, relocate, or remove the other party's equipment, except as expressly authorized in writing by the other party.

**14. Fraud and Network Security.** Zayo is not liable for any damages, including, without limitation usage and toll charges, Customer may incur as a result of the unauthorized use of Customer's telephone and/or network facilities. This unauthorized use includes, but is not limited to, the placement of calls from Customer's premises and the placement of calls through Customer provided equipment and/or Customer's network. In no event will Zayo be liable for protection of Customer's network, transmission facilities or equipment from unauthorized access, or for any unauthorized access to or alteration, theft or destruction of Customer's data files, programs, procedure, information or other network elements or content through fraudulent means or devices. Customer shall remain responsible for any long distance charges or other charges irrespective of any actual or alleged unauthorized or fraudulent use. Zayo shall use reasonable efforts to obtain credit from its carriers for all fraudulent and unauthorized usage, when applicable. Zayo shall have the right, but not the obligation, to immediately deactivate Customer's services in the event Zayo reasonably believes such service is the subject of theft or fraud.

**15. Service Offerings.** Zayo reserves the right to add or delete service offerings during the term hereof and to increase its rates if Zayo provides written notice at least thirty (30) days prior to the effective date of the price increase. If Zayo raises its prices for services, Customer may terminate such services affected by the price increase, without further liability for those services, by giving written notice at least fifteen (15) days prior to the effective date of the price increase.



Upon receipt of Customer's written notice, Zayo shall have ten (10) days to reconsider its price increase. If Zayo decides to recall its price increase and provide services at its then-existing rates, Customer's request for termination shall be deemed withdrawn, and services shall continue to be provided by Zayo in accordance with the terms and conditions of this Agreement.

**16. Title.** Customer expressly disclaims any right, title, perpetual right of use or any other Interest in or to any equipment or property used or supplied by Zayo under this Agreement.

**17. Non-Disclosure and Publicity.** Customer shall not disclose to any third party the terms and conditions of this Agreement without the prior written consent of Zayo.

**18. No Partnership.** This Agreement does not create an agency, or partnership relationship between Zayo and Customer. Neither party shall have any authority to bind the other party to any agreement, understanding or other instrument, in any manner whatsoever.

**19. 911 Emergency Calls.** (a) Service Activation. The Customer is responsible for complying with any state or federally mandated regulations or laws regarding 911 service delivery, including, but not limited to providing notification to end users of any 911 Service limitations, obtaining signed customer acknowledgement forms, providing 911 dialing instruction cards/stickers to all end users and collection of 911 end user surcharges. (b) Phone Relocation. Customer understands and acknowledges that relocation of phones by Customer's end users may result in misdirected 911 emergency calls. Customer is solely responsible for advising its end users regarding proper procedures for moving phones. The Customer is responsible to only offer Primary Rate Interface Service where Zayo can provide local voice service and has 911 plans and underlying public safety answering point connectivity. The Customer will only provide service with telephone numbers that are local to the physical location of their subscriber and associated with that subscriber's wire center. (c) Zayo shall have no liability to Customer, to Customer's end users, or to any third party for any loss, damage, claim or liability, including injury or death, due to misrouting, incompleteness, or any failure of any 911 call, including failures of Customer or Customer's end user to properly initiate activation of 911 calling or to provide proper notice regarding phone relocation, unless Zayo is willfully at fault.

**20. Additional Terms and Conditions Applicable only with the purchase and use of IP/Data Services.** Any and all IP/Data Services (including, but not limited to, Voice Over IP services) are subject to the terms and conditions contained in this Master Agreement and the additional Terms and Conditions set forth in this Section.

**20.1 Service Description.** Zayo Private Data Network Service is an Internet Protocol based communications service enabled at Customer premise locations through a common network. Customer's Service choices are listed below. Customer may, but is not required, to purchase any number of Services; however, a Customer must purchase Private Data Network for at least one location. Private Data Network includes: local access, transport through the Zayo network, and an optional Zayo owned and managed router at each Customer site, and management and support services as needed to support Customer selected Services. Private Data Network Service provides network connectivity among multiple premise locations suitable for data communications requirements within a private network. Customer may select add-on features based on individual Customer requirements ("Add On Features"). Private Data Network Services include the following application choices:

20.1.1 Zayo Internet Access - Connectivity and access to the Internet from Customer's private IP network to the public Internet.

20.1.2 Zayo Video over IP Service - Provides video conferencing options such as point-to-point, multi-participant meetings,

broadcasting video sessions to many sites, and audio only participation. Bridging usage is optional. Bridge availability will be determined on a first come, first served basis.

20.1.3 Zayo Voice over IP Service - Provides an IP telephony solution that enables Customer to create voice communications from a single or multiple premise location(s). Zayo Voice over IP Services are not available in all locations. Customer MUST notify Zayo in writing in advance of movement of any of Customer's phones outside of Zayo's Service areas. If a Customer moves any of its phones to a location outside of Zayo's Service area, Zayo shall have no liability to Customer or to any third party for claims related to misdirected or incompletable calls, including but not limited to 911 emergency calls.

**20.2 IP Address Allocation Policy.** Zayo assigns IP addresses to its customers for use with certain IP/data based Service. Zayo shall retain any assigned public IP address when a customer's service is terminated. Zayo and Customer agree that assigned addresses are "non-portable" and other providers are not allowed to route these addresses unless the Customer is peering with other Internet Service Provider(s) in addition to Zayo. Any Customer IP addresses which are allocated directly from American Registry for Internet Numbers (ARIN) will be ported/routed by Zayo where reasonably possible. However, Zayo cannot guarantee the portability/routability of these addresses beyond its own backbone and to the Internet in general. Zayo reserves the right to modify its IP Address Allocation Policy with thirty (30) days prior written notice to Customer.

**20.3. Acceptable Use Policy.** Zayo supports the free flow of information and ideas over the Internet. Zayo does not actively monitor nor does Zayo exercise editorial control over the content of any web site, electronic mail transmission, mailing list, News Group or other material created or accessible over Zayo networks. However, Zayo reserves the right to remove any materials, that, in Zayo's sole discretion, are potentially illegal, may subject Zayo to liability, or violate this Acceptable Use Policy ("AUP"). Such materials may include, but are not limited to, material that is inappropriate, obscene (including child pornography), defamatory, libelous, threatening, abusive, hateful, or excessively violent. Any violation of this Policy may result in the suspension or cancellation of Zayo services without liability to Zayo. Channeling any part of any such activity through Zayo's network resources shall constitute a violation of this Policy. Zayo WILL IN NO EVENT BE LIABLE OR RESPONSIBLE FOR THE INTERNET OR ANY INFORMATION CONTAINED THEREON. Zayo DOES NOT WARRANT AND DOES NOT ASSUME ANY LIABILITY FOR ANY CONSEQUENCES SUFFERED BY ANY PERSON AS A RESULT OF OBTAINING INTERNET ACCESS INCLUDING, WITHOUT LIMITATION, DAMAGES ARISING FROM INTERNET CONTENT OR FROM COMPUTER VIRUSES.

Using Zayo services and equipment for illegal purposes or in support of illegal activities is strictly prohibited. Zayo reserves the right to cooperate with legal authorities and/or injured third parties in the investigation of any suspected crime or civil wrong. Activities, which are in violation of any local, state or federal laws, statutes, regulations, treaties and/or tariffs, would constitute a flagrant violation of the AUP. Should any Customer activity threaten the integrity of or threaten to adversely affect Zayo's network, Zayo shall be allowed to take steps to reduce or contain the damage, including termination or suspension of the DIA Service.

**20.4 Customer Obligations Concerning Emergency 911 Service Limitations, Limitation of Liability and Indemnification.**

20.4.1 Alternate 911 Arrangements. If you are not comfortable with the limitations of the 911 Dialing service, you should consider having an alternate means of accessing traditional 911 or E911 services or disconnecting the Service.



20.4.2 Confirmation of Activation Required. Customer's 911 feature will not be activated for any phone line that you are using with the Service, unless and until you receive an letter from Zayo confirming that the 911 Dialing feature has been activated for that phone line.

20.4.3 Customer agrees to provide Zayo with detailed information related to the Customer's main location, contact information and all end-user addresses/locations corresponding to all telephones/stations. Customer agrees to continually update this information and shall provide Zayo with written notification prior to implementing any moves, adds or changes to telephones/stations. Customer acknowledges that failure to provide such information on a timely basis will severely impair Zayo's ability to provide emergency 911 services.  
(initial)

20.4.4 Customer understands and agrees it is their responsibility to register the physical location where services will be utilized with Zayo. Customer also understands that if user moves the device to another location, it is Customer's responsibility to notify Zayo of new location. Failure to register locations could result in 911 calls be routed to the incorrect public safety answering point.  
(initial)

20.4.5 Service outages include, but are not limited to:

20.4.6 Service Outages Due to Power Failure or Disruption. 911 Dialing does not function in the event of a power failure or disruption. If there is an interruption in the power supply, the Service, including 911 Dialing, will not function until power is restored. Following a power failure or disruption, you may need to reset or reconfigure the Device prior to utilizing the Service, including 911 Dialing.

20.4.7 Service Outages Due to Internet Outage or Suspension or Disconnection of Broadband Service or ISP Service. Service outages or suspensions or disconnections of service by Customer's broadband internet provider or ISP will prevent all Service, including 911 Dialing, from functioning.

20.4.8 Service Outage Due to Disconnection of Customer's Account. Service outages due to disconnection of Customer's account will prevent all Service, including 911 Dialing, from functioning.

20.4.9 Service Outages Due to ISP or Broadband Provider Blocking of Ports or Other Acts. Customer's broadband provider or other third party may intentionally or inadvertently block the ports over which the Service is provided or otherwise impede the usage of the Service. In that event, provided that you alert us to this situation, we will attempt to work with you to resolve the issue. During the period that the ports are being blocked or Customer's Service is impeded, and unless and until the blocking or impediment is removed or the blocking or impediment is otherwise resolved, Customer's Service, including the 911 Dialing feature, may not function. You acknowledge that Zayo is not responsible for the blocking of ports by Customer's ISP or broadband provider or any other impediment to Customer's usage of the Service, and any loss of service, including 911 Dialing, which may result. In the event you lose service as a result of blocking of ports or any other impediment to Customer's usage of the Service, you will continue to be responsible for payment of the Service charges unless and until you disconnect the Service in accordance with this Agreement.

20.4.10 Other Service Outages. If there is a Service outage for any reason, such outage will prevent all Service, including 911 Dialing, from functioning. Such outages may occur for a variety of reasons, including, but not limited to, those reasons described elsewhere in this Agreement.

20.4.11 Customer understands that Zayo's 911 Dialing service will not function in the event of a service outage or if Customer's broadband, ISP or Zayo phone service is terminated.  
(initial)

20.4.12 Zayo will supply customer with any and all appropriate 911 warning labels. Customer will be responsible for informing its end-users of the 911 limitations and instruct them to place the warning labels on or near phone extension.

20.4.13 Zayo shall have no responsibility or liability to the Customer or any third party in connection with or for responding to emergency 911 or other emergency referral calls. Customer agrees to indemnify and defend Zayo from and against any actions and/or liability arising out of Zayo's provision of said service.

20.5 Spam. Zayo prohibits the transmission, distribution or storage of unwanted or offensive content. Prohibited transmissions include without limitation, viruses, trojan horse programs, messages which include character sequences intended to control the recipient's computer or display screen, make-money fast schemes, pyramid or chain letters, fraudulent offers, threats, harassment, defamation, postings to a newsgroup in violation of its rules, charter or FAQ, unsolicited advertising (whether commercial or informational) and unsolicited e-mail ("SPAM"). Zayo strongly opposes SPAM, which floods the Internet with unwanted and unsolicited e-mail and deteriorates the performance and availability of the Zayo network. All forms of SPAM, and all activities that have the effect of facilitating SPAM, are strictly prohibited. Violation of this provision will result in termination of any applicable Service Attachment and/or Customer's entire Master Agreement. Zayo shall be allowed to take any action it deems necessary to prevent the transmission, distribution or storage of SPAM.

20.6 Traffic Limitation. The IP-based data Services provided hereunder are to be used only in conjunction with services purchased from Zayo. Notwithstanding anything in this Agreement to the contrary, no data traffic shall traverse Zayo's connections unless such traffic originates from or is destined for Customer end-users assigned to the service ports provided under this Agreement. Traffic not described in the preceding sentence shall be blocked from traversing Zayo's peering connections.

20.7 Voice Traffic Restrictions. Zayo prohibits using the Service without prior written approval for high-volume auto-dialing, continuous or extensive call forwarding, high-volume telemarketing (including, without limitation, charitable or political solicitation or polling), fax or voicemail broadcasting or fax or voicemail blasting. We reserve the right to immediately disconnect or modify Service if we determine, in our sole and absolute discretion, that you have at any time used the Service or the Device for any of the aforementioned or similar unapproved activities.

20.8 Service Availability. Zayo's ability to provide Customer with Data/IP based services depends upon several unknown factors, including, but not limited to, the quality of the existing wiring at and to the Customer's site and any and all Customer premise equipment. In an effort to evaluate service availability, Zayo may conduct a customer site survey. Notwithstanding anything to the contrary in this Agreement, Zayo shall be allowed to cancel this Agreement without liability to Customer if Zayo determines, in Zayo's sole discretion, that the service cannot be provided to Customer in an economically viable manner, with sufficient quality or speed and/or as a result of any other factors discovered, including those factors learned through the customer site survey.

20.9 Customer's Obligations. Customer acknowledges and agrees that Customer may be required to provide certain equipment at Customer's premises (the "CPE") for services. The CPE must comply with Zayo's interface requirements. In the event that the CPE or any



equipment or software not provided by Zayo impairs Customer's use of any Services, Customer shall nonetheless be liable for payment for all Services provided by Zayo. Zayo shall not be responsible for the operation or maintenance of Customer owned and operated CPE. Customer shall be required to provide adequate electrical power and any necessary secondary/back-up power, a suitable cable access route, environment, and space for equipment and to pay for any damages caused to equipment provided by Zayo, if any, by Customer's negligence or willful acts or by fire, electrical or lightning surges or any other cause except Zayo's equipment malfunction. Customer shall make any Zayo equipment located on Customer's premises available for maintenance in a timely manner and shall pay Zayo's charges for time and material resulting from problems, which were caused by Customer or Customer's equipment.

20.10 Customer acknowledges and agrees that Customer will utilize and connect only IP based telephony devices and software client-based softphones that are approved and certified by Zayo for use with service provided hereunder. Any IP telephony devices and software client-based softphones not included on Zayo's approved and certified list are expressly prohibited from use with Zayo service. Zayo shall have the right to update and modify from time to time, said list of approved and certified equipment.

**21. Modification.** This Agreement and each provision hereof may be amended only by an instrument in writing signed by the parties hereto. No failure or delay on the part of either party in exercising any right hereunder and no course of dealing between the parties shall operate as a waiver of any provision hereof.

**22. Legal Compliance.** In conjunction with this Agreement, each party shall at all times comply with all applicable federal, state, and local statutes, ordinances, regulations and orders of any commission or other government body.

**23. Choice of Law.** This Agreement shall be governed by the laws of the State of Tennessee and all actions shall be under the exclusive jurisdiction of the courts of Shelby County. Zayo agrees that all actions, whether in contract or in tort, relating to the validity, construction, interpretation, and enforcement of this Contract will be instituted and litigated in the courts of the State of Tennessee, located in Shelby County.

**24. Notices.** All notices shall be in writing and shall be delivered by certified mail return receipt requested or any other delivery system which is capable of providing proof of delivery, including facsimile copy or electronic mail, provided receipt is confirmed. Any such notice shall be deemed effective on the day of actual delivery. All notices shall be addressed to Zayo or Customer as set forth herein. All notices to Zayo shall be addressed to:

If to Zayo:

Zayo Enterprise Networks, LLC  
Attn: General Counsel  
901 Front Street, Suite 200  
Louisville, CO 80027  
Email: [legal@zayoms.com](mailto:legal@zayoms.com)  
Fax: 303-226-5786

If to Customer:

Steve Solaas  
Shelby County Government  
Information Technology, 10<sup>th</sup> Floor  
160 North Main Street,  
Memphis, TN 38103  
(901) 545-4967  
Fax: 901-545-3777  
Email: [steve.solaas@shelbycountyttn.gov](mailto:steve.solaas@shelbycountyttn.gov)

And

Contracts Administration  
Shelby County Government  
160 North Main Street, Suite 550  
Memphis, TN 38103  
(901) 545-4363

The addresses set forth may be changed by appropriate notice to the other party.

**30. Entire Agreement.** This Agreement and its Exhibits comprise the complete and exclusive statement of the agreement of the parties concerning the subject matter hereof, and supersede all previous statements, representations, and agreements concerning the subject matter hereof.

**31. Severability.** If any part of this Agreement shall be invalid or unenforceable under applicable law, said part shall be ineffective to the extent of such invalidity only, without in any way affecting the remaining parts of said provision or the remaining provisions of this Agreement, and the Customer and Zayo agrees to negotiate with respect to any such invalid or unenforceable part to the extent necessary to render such part valid and enforceable.

**32. Subcontracting.**

32.1 Any subcontracting, assignment, delegation or transfer of all or part of the rights, responsibilities, or interest of either Party to this Agreement is prohibited unless by prior written consent of the other Party, which consent shall not be unreasonably withheld. No subcontracting, assignment, delegation or transfer shall relieve the Party from its performance under this Agreement. The Customer shall not be responsible for the fulfillment of Zayo's obligations to its transferors or subcontractors.

32.2 Upon the request of the other Party, the subcontracting, assigning, delegating, or transferring party shall provide all documents evidencing the subcontract, assignment, delegation or transfer.

**33. Conflict of Interest.** Zayo covenants that it has no public or private interest, and will not acquire directly or indirectly any interest which would conflict in any manner with the performance of this Agreement. Zayo warrants that no fees shall be paid directly or indirectly to any officer or employee of the Customer as wages, compensation, or gifts in exchange for acting as an agent or subcontractor in connection with any services Zayo is obligated to perform under this Agreement.

**34. Contingent Fees.** Zayo warrants that it has not employed or retained any company or person other than a bona fide employee of Zayo working solely for Zayo to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for Zayo, any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, the Customer shall have the right to recover the full amount of such fee, commission, percentage, brokerage fee, gift, or other consideration.

**35. General Compliance with the Law.** Zayo warrants that it is qualified or will take steps necessary to qualify to do business in the State of Tennessee and that it will take such actions as, from time to time, may be necessary to remain so qualified and it shall obtain, at its expense, all license, permits, insurance, and governmental approvals, if any necessary to perform its obligations under this Agreement. Zayo acknowledges, that at all times, it will observe and comply with all federal, state, and local laws, ordinances, and regulations in any manner affecting the performance of its obligations under this Agreement. The preceeding shall include, but is not limited to, compliance with all Equal Employment Opportunity laws, the Fair Labor Standards Act Occupational Safety and Health Administration



(OSHA) requirements, and the Americans with Disabilities Act (ADA).

**36. Non-Discrimination.** Zayo hereby agrees, warrants, and assures compliance with the provisions of Title VI and VII of the Civil Rights Act of 1964 and all other federal statutory laws which provide in whole or in part that no person shall be excluded from participation or be denied benefits of or be otherwise subjected to discrimination in the performance of this Agreement or in its employment practices of the on the grounds of handicap and/or disability, age, race, color, religion, sex, national origin, or any other classification protected by federal, Tennessee State Constitutional or statutory law. Zayo shall upon request show proof of such non-discrimination and shall post in conspicuous places available to all employees and applicants notices of non-discrimination.


**36. Disclosure of Reports, Data, or Other Information.** Notwithstanding anything to the contrary contained herein or within any other document supplied to Customer by Zayo, Zayo understands and acknowledges that Customer is a governmental entity subject to the laws of the State of Tennessee and that any reports, data or other information supplied to Customer by Zayo due to Services performed pursuant to this Contract is subject to being divulged as a public record in accordance with the laws of the State of Tennessee. Additionally, all books of account and financial records that are specific to the work being performed in accordance with this Contract may be subject to

audit by the Director of Administration and Finance of Shelby County Government and/ or its designated appointee, and all records pertaining to the subject matter contained herein must be preserved by Zayo for a period of three (3) years from the date of final payment and for such period, if any, as is required by all applicable laws.

**37. Living Wage Ordinance.** In accordance with Ordinance Number 328, commonly referred to as the Living Wage Ordinance, Zayo shall pay a Living Wage to employees for any and all Services performed under this Agreement, as defined in the Living Wage Ordinance. Proof of such compensation must be evidenced as required in the Living Wage Ordinance.

DATED this 15<sup>th</sup> day of June, 2009.

Zayo Enterprise Networks, LLC

By:   
Name: Peter Chevalier  
Title: General Counsel

Shelby County Government

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_